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September 28, 2018

VIA ECF

Honorable Renée Marie Bumb, U.S.D.J.
United States District Court for the District of New Jersey
Mitchell H. Cohen Federal Building and U.S. Courthouse
1 John F. Gerry Plaza
4th & Cooper Streets
Camden, New Jersey 08101

Re: *Genentech, Inc., et al. v. Celltrion, Inc., et al.*
Consolidated Civil Action No. 18-cv-574 (RMB)

Dear Judge Bumb,

This firm, together with Irell & Manella LLP, represents plaintiffs Genentech, Inc., Biogen, Inc., Hoffmann-La Roche Inc., and City of Hope (collectively, “Plaintiffs”) in the above-referenced matter. We write on behalf of all parties to (i) provide the parties’ proposals regarding the schedule and logistics for the preliminary injunction hearing scheduled to begin on Tuesday, October 2, 2018, (ii) to respond to the Court’s September 25, 2018 Order regarding procedure for sealing the courtroom during the hearing (D.I. 152), and (iii) to request a pre-hearing conference at the Court’s convenience on Monday, October 1, 2018 pursuant to the Court’s September 13, 2018 order (D.I. 140).

I. Preliminary Injunction Hearing

The parties have met and conferred extensively and have reached agreement on pre-trial exchanges, *e.g.*, exchanges of exhibit lists, witness lists, and deposition designations. The parties have also reached agreement on several topics concerning the hearing itself, although there remains one disputed issue. We address these in turn below.

a. Joint Proposals

The parties propose the following pre-hearing submissions and to proceed on the following schedule for the hearing itself:

- On October 1, 2018, under cover of a joint letter to the Court for the Court’s convenience, each party will submit its final exhibit list and final witness list.

- The parties are working on a joint proposal for the schedule for witnesses, and will provide the schedule to the Court on Monday, October 1. The schedule will take into account the parties' agreement to accommodate certain individual expert witnesses whose professional schedules require them to testify on specific days and times. The parties will split the available court time equally, with cross time charged to the party conducting the cross-examination.
- The parties propose Opening statements (one hour per side) on October 2, followed by witness testimony.

b. Post-Hearing Briefing

The parties propose to forego closing arguments at the conclusion of the hearing. Instead, the parties propose to submit post-hearing briefing. After meeting and conferring, the parties have been unable to reach agreement on a schedule and page limits for post-hearing briefing. The parties submit their proposals below for the Court's consideration:

Plaintiffs' Proposal

As demonstrated by the briefing submitted to date and the number of witnesses expected to testify, there are numerous issues to be decided on this preliminary injunction motion, including infringement and validity of the two patents at issue and the question of irreparable harm. Each issue has several layers and details to address, and is of significant importance to the parties. Moreover, following a four-day hearing on these issues, there will be an extensive record of testimony and evidence.

To properly and thoroughly summarize that record for the Court's benefit, it is Plaintiffs' belief that sufficient time and space is required, as well as the opportunity to briefly respond to points made in the respective closing papers. Defendants' proposal below does not adequately meet those three factors. Accordingly, Plaintiffs initially proposed to Defendants, and propose here, the following schedule:

- Simultaneous closing briefs of 60 pages each on October 30, 2018;
- Simultaneous responses of 30 pages each on November 16, 2018.

As a compromise, Plaintiffs proposed simultaneous closing briefs of 40 pages on October 23 and simultaneous responses of 20 pages on November 2. Defendants did not agree, but Plaintiffs remain willing to agree to this compromise proposal.

Defendants' Proposal

The parties have already submitted multiple rounds of pre-hearing briefing to the Court and the Court will be hearing witness testimony and opening statements over the course of four days. In view of this, Defendants propose that post-hearing submissions should be brief and completed promptly after the hearing to provide the Court with adequate time to issue a written decision on Plaintiffs' motion for preliminary injunction. Specifically, Defendants propose the following:



- Simultaneous post-hearing briefs limited to 30 pages on October 23, 2018 at 9 pm EST.

Defendants believe that their proposed timing and page limitations are reasonable given the amount of briefing that has already been filed and the testimony that the Court will have already heard by that time.

II. Courtroom Sealing

Some of the material that will be discussed by witnesses at the hearing or in documents discussed during the hearing will disclose information that the parties have designated as Highly Confidential pursuant to the Stipulated Discovery Confidentiality Order (“DCO”) (D.I. 116-1), including information that contains highly confidential and competitively sensitive information regarding the parties’ products, internal financial and pricing information, and highly proprietary manufacturing processes.

Mindful of the standard that must be met before the courtroom is sealed to the public, Defendants request that any individuals who are not authorized to have access to Highly Confidential materials under the DCO be asked to leave the courtroom during only the following portions of the hearing:

- Testimony of Dr. Anne Robinson that relates to infringement or otherwise describes Defendants’ highly confidential manufacturing process for its CT-P10 product.
- Testimony of Dr. Hansjörg Hauser that relates to infringement or otherwise describes Defendants’ highly confidential manufacturing process for its CT-P10 product.
- Testimony from Ms. Iris, Dr. Blackburn, Mr. Hofmann, or Dr. Murphy discussing Defendants’ launch date, launch plans, and pricing or contracting strategy for Defendants’ proposed CT-P10 product.

Plaintiffs join in Defendants’ request with respect to the testimony of Dr. Hauser and Dr. Murphy, Ms. Oaks, and testimony that is read-in by deposition designation to the extent that the testimony concerns proprietary information regarding Plaintiffs’ products, manufacturing processes, and/or competitive strategies and position.

The parties maintain that, should such information be disclosed or discussed in open court during the hearing, they will suffer a clearly defined and serious injury. Accordingly, the parties respectfully request that the courtroom be sealed for the above listed testimony. To facilitate this process in the most efficient and least disruptive manner, the parties propose that they advise the Court at the start of testimony from the above witnesses, or at the start of attorney presentations summarizing such testimony, that they anticipate confidential information will be discussed or disclosed so as to minimize the extent to which the courtroom needs to be sealed. The parties look forward to discussing this issue with the Court in advance of the hearing.



III. Pre-Hearing Conference

To facilitate proceeding with this hearing in the most efficient manner for the Court, parties, and witnesses, the parties respectfully request an in-person pre-hearing conference on Monday, October 1st. At the conference, the parties can answer any questions the Court may have about the upcoming preliminary injunction hearing or the parties' post-hearing briefing proposals, as set forth herein.

Respectfully submitted,

s/ Keith J. Miller

Keith J. Miller

cc: All Counsel of Record (*via ECF and email*)